IN THE

Supreme Court of the United States

October Term, 1942.

No. 473.

In re **WILLIAM V. BRADLEY,**

Petitioner.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Supplemental Brief for Petitioner.

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SUPPLEMENTAL BRIEF FOR PETITIONER.

Supplemental Argument.

At the oral argument it was suggested that petitioner cannot maintain that he has satisfied the judgment of the court below and that he is also entitled to be heard upon the legality of his conviction. Only in a restricted sense does this contention have any merit. Even if by satisfying the judgment he could be said to have waived his contention that the evidence was insufficient to show misbehavior, nevertheless, it would seem clear that he is not thereby estopped to contend that the court below lacked power to try the case summarily. Section 268 of the Judicial Code, 36 Stat. 1163, 28 U. S. C. A. 385, after providing that courts shall have power to punish contempts of their authority, places a limitation upon the exercise of such summary power as follows:

> "Provided that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice . . ."

This is clearly a limitation upon the power of the court to summarily adjudicate. It is not a mere provision intended for the convenience of litigants which they may waive but is rather a fundamental prohibition upon the jurisdiction of the court itself. It follows, therefore, that if misbehavior does not occur in the presence of the court, or so near thereto as to obstruct the administration of justice, the court is forbidden by the statute to summarily punish it. Petitioner contends that this case does not fall within the class of cases punishable by summary action. Hence, petitioner's payment of the fine in satisfaction of a judgment which was beyond the power of the court to impose does not make valid that which for want of power was invalid. Although a litigant may confer upon the court jurisdiction of his person he cannot confer upon the court jurisdiction of the subject matter,[1] that is, the power to adjudicate. This power the court may acquire only by authority of law.[2]

A different rule must be applied to cases where the attack is merely upon the sufficiency of the evidence to sus-

[1] Mitchell v. Maurer, 293 U. S. 237, 244, 55 S. Ct. 162; Chi. B. & Q. R. Co. v. Willard, 220 U. S. 413, 420, 31 S. Ct. 460, 55 L. Ed. 521; Minnesota v. Northern Securities Co., 194 U. S. 48, 62, 24 S. Ct. 598, 48 L. Ed. 870; Athan v. Hartford Fire Ins. Co., 73 F. (2d) 66, 67 (C. C. A. 2); United States v. Mayer, 235 U. S. 55, 35 S. Ct. 16.

[2] Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U. S. 165, 167, 60 S. Ct. 153, 154; Mansfield, Coldwater & Lake Michigan R. Co. v. Swan, 111 U. S. 379, 382, 4 S. Ct. 510, 28 L. Ed. 462; Oneida Navigation Corp. v. W. & S. Job & Co., 252 U. S. 521, 522, 40 S. Ct. 357, 358, 64 L. Ed. 697; Republic Supply Co. v. Richfield Oil Co., 9 Cir., 74 F. 2d 907, 908, certiorari denied Cities Service Co. v. Armsby, 296 U. S. 583, 56 S. Ct. 94, 80 L. Ed. 412; American Brake Shoe & Foundry Co. v. New York Rys. Co., 2 Cir., 282 F. 523, 527; Cleveland Cliffs Iron Co. v. Village of Kinney, 8 Cir., 266 F. 888.

tain a conviction than where the challenge is to the fundamental power of the court to adjudicate the matter. To this extent, therefore, it is submitted that petitioner may persist in the position he took in paying the fine but which his counsel failed to state in oral argument—(1) that the judgment of the court lacked legal authority, (2) that even if this Court should be of opinion that this contention is wrong and that the court's judgment, although erroneous, was not void for want of power, nevertheless, that judgment was satisfied by petitioner and that he ought to be discharged.

That this position is not an afterthought is shown by the Record. When the evidence of the prosecution disclosed a want of power to proceed summarily, petitioner moved to dismiss on the ground that the evidence did not "justify the use of the summary jurisdiction of the court to punish for contempt" (R. 27). Furthermore, when the court entered its judgment and counsel was arguing that bail be granted to operate as a supersedeas, and the court inquired as to his position in the matter, he answered (R. 42):

> "I seek to raise first, sir, that this court is without power to impose the summary judgment of sentence against this respondent for an act which was done a hundred yards away from the court at a time when the court was not in session, and particularly where the act was done, and the language was used, to a man who was not yet a witness, who was not under a subpœna or authority of this court, and by the use of language which was at the very worst ambiguous."

It was only after the court below refused bail and sent petitioner forthwith to jail that he paid the fine. We contend that such payment was not in any sense an abandon-

ment of his position or a waiver of his right to attack the jurisdiction of the court. It is respectfully submitted, therefore, that since this Court has brought this matter before it on certiorari, the evidence, so far as it relates to the power of that court to proceed to summary judgment, ought to be examined. *Mansfield C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382, 4 S. Ct. 510.

Respectfully submitted,

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